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Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

RE: Notice of Ex Parte Communication, MB Docket No. 13-236 Amendment of Section 73.3555(e) of the Commission's Rules National Television Multiple Ownership Rule

Dear Ms. Dortch:

In 1985 the UHF Discount was initially adopted in recognition of the technical inferiority of analog UHF signals, as compared with analog VHF signals.[1] In 1996, when Congress raised the national audience reach limit from 25 percent to 35 percent, it approved the use of the UHF discount.[2] In its 1998 biennial ownership review, released in 2000, the Commission reaffirmed the 35 percent limit and the UHF Discount.[3] At the time the Commission recognized that changing its ownership cap could "influence the bargaining positions between broadcast television networks and their affiliates" (*Id.*, at ¶ 30), and otherwise balance the "competitive disparity between VHF and UHF television" (*Id.*, at ¶ 36).

In 2003, in the context of the 2002 biennial ownership review, the Commission considered that the rule was no longer necessary to promote competition or diversity. However,

[1] *Amendment of Section 73.35555 of the Commission's Rules Relating to Multiple Ownership of AM, FM and Television Broadcast Stations*, GN Docket No. 83-1009, Memorandum Opinion and Order, 100 FCC 2d 74, at ¶¶42-44 (1985); 47 CFR § 73.3555(e)(2)(i).

[2] *Communications Act of 1995, H.R. Rep. No. 104-204, Part 1* (at pg. 118) ("This 'UHF discount' appropriately reflects the technical and economic handicaps applicable to UHF facilities and the Committee does not envision that the UHF discount calculation will be modified so as to impede the objectives of this section.").

[3] *1998 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, MM Docket No. 98-35, 15 FCC Rcd 11058, at ¶ 25 (released June 20, 2000).

the Commission stated that the national audience cap remained necessary to promote "localism" and increased the national audience reach limit to 45 percent.[4] As the Commission clarified, "preserving a balance of power between the networks and their affiliates serves local needs and interests by ensuring that affiliates can play a meaningful role in selecting programming suitable for their communities" (*Id.*, at ¶ 501).

In the 2002 biennial review, the Commission also upheld the continued use of the UHF Discount both for technical reasons (*Id.*, at ¶ 588), and to continue to support the ability of non-network broadcast ownership groups to compete with stations owned and operated by the major broadcast networks (i.e., ABC, CBS, NBC, and FOX).[5] For similar reasons, the Commission sunset the application of the UHF Discount for stations owned and operated by the four major broadcast networks (Id., at ¶ 591). As a justification the Commission repeated that "the digital transition [would] largely eliminate the technical basis for the UHF discount because the UHF and VHF signals [would] be substantially equalized" (*Id.*).

Despite this broad claim, for all other non-major broadcast networks and station group owners, the Commission concluded the UHF Discount would *not* automatically sunset and the Commission would "continue to examine the extent of competitive disparity between UHF and VHF stations as well as the impact on the entry and viability of new broadcast networks" (*Id.*).

In the U.S. Court of Appeals for the Third Circuit's ruling in *Prometheus Radio Project v. FCC*, 373 F. 3rd 372 (3rd Cir. 2004), the court rejected efforts to eliminate or modify the UHF Discount. The court noted that following Congress' enactment of the Consolidated Appropriations Act, Pub. L. No. 108-199, § 629, 118 Stat. 3, 99-100 (2004), any elimination or modification of the UHF Discount would conflict with the will of Congress. Accordingly, as Trinity argued in its December 16, 2013 Comments in this docket, in the absence of further directive from Congress, the Commission lacks the substantive and procedural authority to eliminate or modify the UHF Discount.

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[4] *2002 Biennial Review Order – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, MB Docket No. 02-277, 18 FCC Rcd 13620, at ¶¶ 585–91).

[5] *Id.*, at ¶ 590 ("[W]e observe that the established broadcast networks generally have not sought to take advantage of the UHF discount to gain greater national reach through local stations. The four most established broadcast networks collectively own 67 stations, 12 of which are UHF stations.... This data indicates that the UHF discount plays a meaningful role in *encouraging entry of new broadcast networks into the market. For these reasons, we retain the UHF discount*."). (Italics added)

Moreover, the UHF Discount continues to play an important role in the broadcast marketplace by fostering the development and establishment of new and diverse broadcast networks. Trinity is an example of that, consisting of 31 stations, ranging from some of the largest television markets, such as Los Angeles and Philadelphia, to smaller markets such as Rockford and St. Joseph. ION Media Networks, Inc. and Univision are additional examples of station groups that were able to develop using the UHF Discount.

The addition of these station groups and new networks has led to a healthier and more competitive broadcast television marketplace. This manifestly enhances the public interest, and serves overarching First Amendment values by expanding viewer choices and options.[6] In addition to expanding its national audience reach, Trinity has also been able to develop and deliver new free-to-the-home programming by multicasting. These multicast streams include "The Trinity Broadcasting Network," "Smile of a Child TV," "The Hillsong Channel" (formerly "The Church Channel"), "Enlace USA," "TBN Salsa," and "JUCE TV." In addition to its flagship service, "The Trinity Broadcasting Network," Trinity was able to develop these additional multicast video programming streams to better serve the unique interests of a wide variety of audiences.

"Enlace USA," for example, serves the religious programming needs and interests of Spanish-speaking viewers. "TBN Salsa" provides English and Spanish language programming serving the wider Hispanic community and culture. "Smile of a Child TV" is a service providing significant Children's educational programming. "The Hillsong Channel" crosses denominational lines across America, providing access to the best and most popular church services, along with live events and concerts. Finally, "JUCE TV" is a Christian programming network designed with the 13-29 year old age group in mind, combining music video programming, sketch and stand-up comedy, talk shows, action- and extreme-sports programming, and other subject matter of interest to teens and young adults. Each of these multicast programming streams would not have been possible without the larger national audience reach permitted via the UHF Discount, and the economies of scale it allowed.

[6] As the **Error! Main Document Only.**Supreme Court noted more than seventy years ago, the First Amendment's "assumption that the widest possible dissemination of information from diverse value and antagonistic sources" promotes a free society. *Associated Press v. United States*, 326 U.S. 1, 20 (1945). This same view was confirmed in *Turner Broadcasting System, Inc. v. FCC*, 520 U.S. 180, 189 (1997), holding that "promoting the widespread dissemination of information from a multiplicity of sources" is an important government interest, and a core First Amendment value.

Trinity hopes the Commission will reconsider its proposed decision to eliminate the UHF Discount. If it does eliminate the UHF Discount, however, Trinity supports the proposal submitted by ION in its July 15, 2016 ex parte notice in this docket, asking that the Commission apply a full, permanent and transferable grandfathering (what ION referred to as "Permanent Grandfathering") to companies like Trinity whose networks were built in reliance of the UHF Discount. In the absence of Permanent Grandfathering, a UHF network owner would be forced to split up its network in order to sell its group to another owner, thereby negating the diversity and competition benefits these networks have created, along with the benefits these groups provide to the viewing public, the programming marketplace, the public interest, and in helping fulfill core First Amendment values.

Respectfully submitted,

TRINITY BROADCASTING NETWOK

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